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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 25, 1998

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PUE980334

SANVILLE UTILITIES CORP.

FINAL ORDER

On July 8, 1998, the Staff of the State Corporation Commission ("Staff") filed a Motion Requesting Issuance of a Rule to Show Cause requiring Sanville Utilities Corporation ("Sanville" or "the Company") to show cause, if any there may be, why it should not be found in violation of § 56-265.13:4 of the Code of Virginia ("Code"). In its Motion, Staff requested that the Commission, pursuant to its authority under §§ 56-35 and 56-265.6 of the Code, revoke, alter, or amend the Company's certificate to provide sewer service unless the Company agrees to: (1) replace the entire section of sewer pipe along Saddle Ridge Road; (2) conduct a thorough study of the entire sewer system to determine what other portions of the system should be repaired and/or replaced, and (3) provide a voice mail or similar telephone answering system or service to ensure receipt of and response to inquiries from customers and regulators.

Staff further requested such other relief as the Commission finds necessary, just and reasonable to protect the public interest.

On July 13, 1998, the Commission issued a Rule to Show Cause against the Company directing it to appear on September 16, 1998, in the Commission's courtroom to show cause, if any there may be, why the Company should not be found in violation of § 56-265.13:4 of the Code. The Order also established a procedural schedule for the filing of a responsive pleading and appointed a Hearing Examiner to conduct further proceedings.

On August 17, 1998, the Company filed its response and requested that the hearing be cancelled. In its response, Sanville recited specific problems and disclaimed responsibility. The Company also claimed that it lacks the funds to make the requested improvements and advised that the Public Service Authority of Henry County, Virginia ("PSA") is considering taking over the sewer system and treatment plant. Staff objected to Sanville's request to cancel the hearing.

On September 9, 1998, Sanville filed a request for a continuance, alleging that Sanville's president, Richard M. Anthony, had been summoned to appear in the General District Court in Martinsville, Virginia, on September 16, 1998, and that the General District Court case could not be continued because

the judgment creditor's attorney in that case was out of town. Staff did not object to a continuance of several days to avoid this conflict.

On September 11, 1998, the Hearing Examiner denied Sanville's request to cancel the hearing but granted the Company's request for a short continuance to avoid Mr. Anthony's conflict with his appearance in the General District Court in Martinsville. The hearing was continued until September 22, 1998.

Pursuant to these Orders, the hearing was convened on September 22, 1998, before Chief Hearing Examiner Deborah V. Ellenberg. Mr. Anthony appeared pro se. M. Renae Carter, Esquire, and Don Mueller, Esquire, appeared on behalf of the Commission's Staff.

At the hearing Staff offered the testimony of Gregory L. Abbott, Utilities Specialist in the Commission's Division of Energy Regulation; Tim Baker, Environmental Health Manager with the West Piedmont Health District, Virginia Department of Health ("VDH"); and Dr. James F. Smith, Senior Enforcement Specialist with the Virginia Department of Environmental Quality ("DEQ"). Mr. Anthony testified in his own behalf.

Mr. Abbott testified that Staff's investigation began in June 1998, after Staff received a complaint about sewage backups into a customer's home and yard. He noted that, during a site

visit to the Company's facilities, six customers voiced additional complaints about the sewer system. Mr. Abbott also testified about a sewage backup at the Rhodes' property on Saddle Ridge Road, in which raw sewage was allowed to leak onto the ground for two months. Mr. Abbott concluded that the Company had failed to provide reasonably adequate sewer services.

Mr. Baker testified that incidents of raw or partially treated sewage leaking into yards and backing up into homes is a recurring public health hazard with the Sanville sewer system and noted seventeen specific instances of sewage overflow or backup in the Sanville system between November 1995 and June 1998. Additionally, Mr. Baker sponsored a complaint record detailing VDH actions relating to the two month long sewage backup at the Rhodes' home. Specifically, Mr. Baker testified that VDH issued to Sanville a notice of violation on May 6, 1998, citing septic system effluent leaking onto the ground and directing the Company to cease such discharges immediately. On June 10, VDH again notified Sanville to report that two unsuccessful attempts had been made to unclog the sewer line on Saddle Ridge Road and that these attempts had only created more problems for nearby residents. On June 18, 1998, the line was unstopped.

Dr. Smith testified that Sanville had 995 DEQ violations of permit limits and statutes between April 1, 1992, and March 31, 1998. Additionally, Dr. Smith testified about a DEQ notice of violation issued July 11, 1998 ("NOV"), citing still more violations discovered during inspections conducted on March 31, and June 23, 1998. The NOV noted that there was improper operation and maintenance of the sewerage plant. The NOV also stated that the unchlorinated discharge into Blackberry Creek and sewage seeping through the ground on the Rhodes' property were unreported, unauthorized, and continuing violations.

Dr. Smith also testified that the PSA was considering taking over the Sanville treatment plant and sewerage system. He sponsored a Preliminary Engineering Report prepared for the PSA discussing the sewer system's poor condition. The Report states that nearly all the sewer lines are made of terra cotta material and that some of these lines have had blockage due to intrusion of tree roots. The Report recommends the replacement of the existing treatment facility and of approximately 6400 linear feet of 8" sewer lines. The Report concludes that existing deficiencies should be corrected before the PSA can take over the system. Finally, Dr. Smith sponsored the affidavit of Sidney A. Clower, County Administrator and General Manager of the PSA, who advised that, upon approval, the PSA would accept the sewer system as of January 1, 1999, if Mr.

Anthony would retain responsibility for all the sewer system's liens, debts and encumbrances.

Mr. Anthony testified in his own behalf. He observed that numerous incidents, including the two month long backup at the Rhodes' property, were not his fault. He advised that the Rhodes had not paid their bill and that he had allowed the progressive intrusion of tree roots to "disconnect" service in accordance with his tariff. He noted that other incidents were the results of vandalism. Mr. Anthony also testified that the Company did not have the money to pay for the repairs Staff is requesting and that, although he does not want to continue operating the system, he cannot accept the conditions suggested by the PSA. He noted that, under the proposed PSA agreement, the debts, liens and encumbrances he would retain would approximate \$100,000.

On October 20, 1998, the Chief Hearing Examiner filed her report. Based on the evidence in the proceeding, the Examiner found:

(1) That Sanville is a small certificated public service corporation¹ providing sewer service to approximately 162 customers in Henry County, Virginia;

¹ On November 2, 1998, Sanville's corporate status was terminated by operation of law pursuant to § 13.1-752 of the Code for failure to pay its annual registration fees.

(2) That Sanville is subject to the Small Water or Sewer Public Utility Act ("SWSA");

(3) That Sanville is required to provide its customers with reasonably adequate services and facilities pursuant to the SWSA;

(4) That the majority of Sanville's sewerage collection system was installed in the 1970s and constructed of terra cotta material, which over time has fallen into disrepair because of vandalism, line breaks, and tree roots;

(5) That Sanville's customers have experienced numerous overflows into their homes and into their yards which on at least one occasion was left uncorrected for two months;

(6) That these sewage overflows have threatened the health of Sanville's customers;

(7) That the Sanville sewage plant threatens the public health because raw sewage is discharged into Blackberry Creek during flood events, adversely affecting Virginia residents downstream;

(8) That Sanville has received numerous notices of violations from the Virginia Department of Health for allowing untreated sewage effluent to leak onto the ground;

(9) That Sanville also has received numerous notices of violation from DEQ;

(10) That the conditions of the Sanville sewer system and its effects on both customers and other members of the public represent a serious and continuous failure to provide reasonably adequate services and facilities in violation of § 56-265.13:4;

(11) That Sanville's failure to comply with all of the Virginia Department of Health and Virginia Department of Environmental Quality regulations constitutes failure to provide reasonably adequate services and facilities in violation of § 56-265.13:4;

(12) That Sanville has not brought its system into compliance with the Virginia Department of Health regulations, has failed to file required reports, and thus has violated the Commission's Final Order dated December 16, 1987, in Case No. PUE860070;

(13) That Sanville should be directed to replace the entire section of sewer pipe along Saddle Ridge Road;

(14) That Sanville should be directed to conduct a thorough study of the entire sewer system to determine what other portions of the system should be repaired and/or replaced;

(15) That the Henry County Public Service Authority has offered to assume responsibility for the Sanville sewage system, and is presently in negotiations with Sanville; and

(16) That if Sanville provides the Commission with proof of the imminent takeover of the system by the Henry County PSA,

Sanville should be relieved of the obligations to replace portions of the system and conduct a study to evaluate other necessary repairs or replacements.

The Hearing Examiner recommended that the Commission enter an order that directs Sanville to replace the entire section of sewer pipe along Saddle Ridge Road within six months of the final order in this case; that directs Sanville to conduct a thorough study of the entire sewer system to determine what other portions of the system should be repaired and/or replaced and report the findings of that study to the Division of Energy Regulation within one (1) year of the final order in this case; that requires Sanville to refrain from discontinuing service for nonpayment of bills by allowing tree roots to gradually terminate service; and that imposes fines and penalties on Sanville in the amount of \$1,000 for violation of its statutory obligation to provide reasonably adequate services and facilities pursuant to § 56-265.13:4 and for violation of the Commission's Final Order in Case No. PUE860070. The Hearing Examiner further recommended that these obligations, fines, and penalties be forgiven if the requisite repairs are made to the system or if proof that the system will be transferred to the PSA is filed within six (6) months of the final order. No exceptions or comments to the Chief Hearing Examiner's Report were filed by either party.

NOW THE COMMISSION, having considered the record and the Examiner's Report, is of the opinion and finds that Sanville Utilities Corporation has failed to meet its obligations under § 56-265.13:4 of the Code by failing to provide reasonably adequate sewer services and facilities and that these deficiencies must be corrected. Accordingly,

IT IS THEREFORE ORDERED THAT:

(1) The Chief Hearing Examiner's Report dated October 19, 1998, hereby is adopted.

(2) Within six months from the date of this Order, the Company shall replace the entire section of sewer pipe along Saddle Ridge Road.

(3) Starting December 30, 1998, and on the last business day of every month for the next six months, the Company shall file a report with the Commission's Division of Energy Regulation detailing its progress in replacing the section of sewer pipe along Saddle Ridge Road and discussing the status of any negotiations with the Henry County PSA to take over the sewer system.

(4) The Company shall conduct a thorough study of the entire sewer system to determine what other portions of the system should be repaired and/or replaced and shall report the findings of this study to the Commission's Division of Energy Regulation within one (1) year of the date of this Order.

(5) The Company shall refrain from discontinuing service for nonpayment of bills by allowing tree roots gradually to terminate service.

(6) Pursuant to § 56-265.6 of the Code, the Company shall pay fines and penalties of \$1,000 for violation of its statutory obligation to provide reasonably adequate services and facilities pursuant to § 56-265.13:4, and for violation of the Commission's Final Order dated December 16, 1987, in Case No. PUE860070.

(7) The above mentioned fines and penalties shall be forgiven if the requisite repairs are made upon the Company's sewer system or if the Company provides proof, within six months of the date of this Order, that the sewer system will be transferred to the PSA.

(8) If the Company fails to file any reports or pay any fines and penalties as required by this Order, it shall be subject to fines not exceeding \$1000 per offense, with each day's continuance of such failure to be considered a separate offense, as provided by § 12.1-33 of the Code.